OFFICE OF THE SENATE ETHICS OFFICER

Annual Report 2013-2014

Annual Report of the Senate Ethics Officer 2013-2014

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June 18, 2014

The Honourable Noël Kinsella
Speaker of the Senate
280-F, Centre Block
Parliament Buildings
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the ninth Annual Report of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c.9. It covers the period from April 1, 2013 to March 31, 2014.

Yours sincerely,

Lyse Ricard

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MESSAGE FROM THE SENATE ETHICS OFFICER

This year, the office continued to be busy with the implementation of a series of amendments to the *Conflict of Interest Code for Senators* (the Code) that were adopted in May 2012 and which came into force in October 2012. These changes, many of which involved additional disclosure requirements for senators, continued to generate an increasing number of questions from senators.

In addition, the Code was again amended in April 2014. These latest changes were largely focused on the inquiries provisions of the Code. The Standing Committee on Conflict of Interest for Senators provided me with the opportunity to make submissions concerning this portion of the Code with a view to streamlining the inquiries process, enhancing the independence of the Senate Ethics Officer, and making this process more transparent and open.

I commend the Committee for the work its members have done in proposing these important amendments to the Code and recommending them to the Senate. I am of the view that these changes will significantly improve the inquiries process in the future. These amendments are discussed in greater detail later on in this report.

Of particular note this year, the office undertook its first inquiry since it was established. Given that the inquiries provisions of the Code had never before been interpreted and applied, a great deal of thought and work had to be done in order to build in processes where the Code was silent and to create practices and procedures for this and future inquiries. The office also received two other requests for inquiries. These were dealt with at the preliminary review stage.

This has been a momentous year for my office. The Senate expense issues led to increased public scrutiny of the Senate and this, in turn, led to an increased interest in the work of the office. We received a record number of calls from the media and members of the public and we had to address a number of challenging issues, including questions of overlapping jurisdiction.

Notwithstanding the increase in the volume of work, the office resources have not increased to date. This has proven to be a challenging situation at the best of times. I work with three full-time and two part-time staff.

In this second year of my term, I have had a great deal of cooperation and assistance from many, and I would like to take a moment to recognize them.

First, I would like to express my appreciation to the Standing Committee on Conflict of Interest for Senators for the leadership it has demonstrated in moving expeditiously to address areas of the Code that required change.

Next, I would also like to thank senators and their staff for their continued cooperation throughout the year as well.

Of course, I owe a debt of gratitude to my small but hardworking team for their commitment and dedication and for their continued support and assistance in what was a very challenging and unique year for the office.

Finally, I would like to express my continued appreciation to the Senate Administration for the quality services they have provided to my office. As in past years, certain services in the areas of security, finance, information technology and human resources were provided on a cost recovery basis, pursuant to a written agreement. I look forward to continue working with the Administration in the coming years.

As I look to the future, I am encouraged by the commitment and dedication I have witnessed by the members of the Standing Committee on Conflict of Interest for Senators to advance conflict of interest issues in the Senate. The Senate *Code* has been amended twice in the last two years and the last amendments concerning inquiries are particularly encouraging given that one of their main purposes was to increase the independence of the office in the context of inquiries. This ongoing study and assessment of the *Code* is important in order to ensure that it continues to respond to the changing expectations of Canadians. I look forward to continue to build in the future on the substantial changes that have already been made in such a short span of time.

I. MANDATE OF THE SENATE ETHICS OFFICER

The Office of the Senate Ethics Officer was established under the *Parliament of Canada Act*. The Senate Ethics Officer is responsible for the interpretation, administration and application of the *Conflict of Interest Code for Senators* (the Code). The Code was adopted by the Senate in May 2005, and, after a comprehensive review of its provisions, which is required under the Code, it was revised in May 2008. It was again amended in May 2012, and most recently in April 2014. The Code is a document that is distinct from, but of equal standing to, the *Rules of the Senate*.

A. Three Major Functions

The Senate Ethics Officer's mandate may be broken down into three major functions: (i) providing opinions and advice to senators; (ii) administering the disclosure process; and (iii) conducting inquiries.

(i) *Opinions and Advice*

The Senate Ethics Officer's primary function is to provide advice and guidance to senators with respect to the Code and, in particular, to assist them in understanding their obligations thereunder and to identify conflicts of interest – real, potential and apparent that could be relevant to their circumstances.

Under subsection 42(4) of the Code, written opinions and advice are required to be kept confidential but they may be made public by the senators to whom they relate, or by me with the particular senator's written consent. Some opinions related to contracts with the federal government must be made public under section 31 of the Code.

Along with many other Canadian conflict of interest commissioners in Canada, I recognize that the advisory function is essential to the success of a conflict of interest regime. It provides a means by which legislators are better able to understand how the conflict of interest rules apply to their individual circumstances, given that while the application of the rules may be clear in some situations, in other cases, it may not be so clear. This is where the advisory function is most useful.

Senators are encouraged to seek advice before acting. By availing themselves of the advisory services of the office, they are effectively avoiding conflicts of interest. This approach best serves the public interest because it avoids costly and time-consuming inquiries. It ensures that the system is preventative, not punitive. In other words, the focus is not on addressing conflicts once they have already arisen, but rather on preventing them from arising. Prevention is preferable to cure.

(ii) *The Annual Disclosure Process*

The Office of the Senate Ethics Officer is also responsible for administering the annual disclosure process, which begins in the fall of each year. This is a lengthy

process that is also regarded as an essential feature of any conflict of interest regime. It ensures a measure of transparency and accountability and these, in turn, inspire public confidence in the system.

Under subsection 27(1) of the *Code*, senators are required to file, on an annual basis, a confidential disclosure statement on a date that is established by me with the approval of the Standing Committee on Conflict of Interest for Senators [subsection 27(2)]. Newly appointed senators must file their statements within 120 days after being summoned to the Senate [subsection 27(3)].

These statements include information concerning senators' activities outside their parliamentary duties and functions, their assets and liabilities over $10,000, their sources of income over $2,000, federal government contracts, as well as the outside activities and financial interests of their spouses or common-law partners. Subsection 28(1) sets out the list of interests that senators are required to report confidentially to the Senate Ethics Officer.

Once these statements have been filed, I provide each senator with a letter, which draws attention to any relevant provisions of the *Code* and identifies potential conflicts of interest that are relevant to his or her circumstances, while also providing advice on how these may be prevented. Of course, where senators have specific questions about a particular situation, they are expected to raise the matter with me and provide the information necessary to be able to provide helpful advice to them.

The Office of the Senate Ethics Officer then prepares a public disclosure summary for each senator based on the information that was provided in each senator's confidential disclosure statement. Section 31 of the *Code* sets out the list of interests that must be publicly disclosed. Again, this list includes senators' activities outside their parliamentary duties and functions, as well as their income over $2,000, and their assets and liabilities valued at over $10,000.

After the public disclosure summaries are prepared, senators are required to review, sign and return them to the Office of the Senate Ethics Officer. These summaries are then placed in both a paper public registry located at the office premises, as well as in an online public registry, which is available on my office's website. This registry contains all the information concerning senators that is required to be made public under the *Code*.

As a result of the most recent changes to the *Code* in April 2014, the public registry for the next annual review (2014-15) will include an additional document for each senator. Senators will be required to annually file, pursuant to subsection 45(1) of the *Code*, a statement of compliance confirming that they have read the *Code* within the last 30 days and that, to their knowledge and belief, they are in compliance with the *Code* as of the day the statement is filed.

Even after all senators' confidential disclosure statements have been filed and all senators' public disclosure summaries and statements of compliance are available to the public, the annual disclosure process is an ongoing process that continues throughout the year. Senators are required to ensure that their confidential disclosure

statements are kept up-to-date throughout the year by filing material change forms with my office within 60 days after any material changes occur in their circumstances [subsection 28(6)]. These forms are included within each senator's public disclosure file if the information contained therein is required to be made public under section 31 of the Code.

In addition, when a senator receives a gift or benefit as a normal expression of courtesy or protocol, or that is within the customary standards of hospitality that normally accompany the senator's position, the fact of its receipt must be reported in a statement which forms part of a senator's public disclosure file, in accordance with paragraph 31(1)(*j*), if the value of the gift or benefit (or the cumulative value of all such gifts or benefits received from one source in a 12-month period) is over $500.00.

It should be noted that courtesy gifts are exceptions to the general prohibition in subsection 17(1) against senators receiving gifts and benefits that could reasonably be considered to relate to a senator's position [subsection 17(2)].

As in the case of gifts and other benefits, sponsored travel that falls under subsection 18(1) must be reported in a statement which forms part of a senator's public disclosure file, again under paragraph 31(1)(*j*), if the travel costs exceed $500.00.

Finally, throughout the year, senators must publicly declare any private interests that they have that may be affected by any matter before the Senate, or a committee of the Senate of which they are members. These public declarations are also placed in the public disclosure files of the senators to whom the declarations relate. This is required under paragraph 31(1)(*i*) of the Code.

(iii) *Inquiries*

One of the necessary functions of the Senate Ethics Officer is to conduct inquiries where there are allegations of misconduct in order to determine whether a senator has complied with his or her obligations under the Code.

Under subsection 48(2) of the Code, the Senate Ethics Officer must conduct an inquiry in either of the following circumstances: (a) where the Senate Ethics Officer determines that an inquiry is warranted after conducting a preliminary review; or (b) where the senator who was the subject of a preliminary review requests that an inquiry be conducted because the Senate Ethics Officer has made a finding that an obligation under the Code may have been breached but has determined that an inquiry is not warranted.

The Senate Ethics Officer must conduct a preliminary review under subsection 47(2) of the Code if he or she (a) has reasonable grounds to believe that a senator has not complied with his or her obligations under the Code; or (b) receives a request to conduct an inquiry from a senator who has reasonable grounds to believe that another senator has not complied with his or her obligations under the Code.

A preliminary review is conducted confidentially under subsection 47(5) of the Code but where the Senate Ethics Officer determines that an inquiry is not warranted, the preliminary determination letter is made public (unless the matter is not in the public domain) when the Chair of the Standing Committee on Conflict of Interest for Senators tables it in the Senate pursuant to subsection 47(17) of the Code [see subsections 47(16) and (17)]. If the Senate Ethics Officer determines that an inquiry is warranted, the matter remains confidential until the inquiry report of the Senate Ethics Officer is tabled in the Senate [subsections 48(17),(18) and (19)].

B. Other Rules and Laws

It is important to note that the Senate Ethics Officer's jurisdiction is limited to the *Conflict of Interest Code for Senators*. Having said that, the Code is not the only set of rules that governs the conduct of senators. There are a number of other rules and laws to which senators are subject. However, these additional rules and laws are outside the purview of my office.

For example, the *Senate Administrative Rules* relate to the proper allocation and use of Senate resources. These rules are within the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

In addition, section 16 of the *Parliament of Canada Act* prohibits senators from receiving outside compensation, whether directly or indirectly, for services rendered or to be rendered to any person, either by the senator or another person, in relation to any matter before the Senate or the House of Commons or any of their committees, or for the purpose of influencing or attempting to influence any member of either House.

Sections 119, 121 and 122 of the *Criminal Code* are other examples of laws that relate to the misuse of a public office. Section 119 deals with offences that relate to bribery. Section 121 concerns frauds on the government and is aimed in part at influence peddling. Section 122 creates offences relating to fraud and breach of trust.

C. Independence of the Senate Ethics Officer

The Senate Ethics Officer is an independent, non-partisan Officer of the Senate. This independence is essential in order to ensure public confidence and credibility in the Senate conflict of interest regime. A number of provisions of the *Parliament of Canada Act* and the Code confer this status of independence and autonomy on the Senate Ethics Officer, including the provisions in the Act concerning the appointment process, the security of tenure, financial autonomy, and the management of the office of the Senate Ethics Officer.

For example, subsection 20.4(1) of the Act ensures that the Senate Ethics Officer alone has "the control and management of the office". Subsection 20.4(7) provides that the Senate Ethics Officer is responsible for preparing the estimate of the budget for the office. This estimate is separate and apart from the estimates of the Senate as a whole. Under subsection 20.4(8), the estimate of the Senate Ethics Officer is

provided to the Speaker of the Senate who, after considering it, transmits it to the President of the Treasury Board who, in turn, lays it before the House of Commons with the estimates of the Government for the fiscal year.

My independence concerning the opinions and advice I provide to individual senators is also clear and is expressly provided for in subsection 41(2) of the *Code*. I am also independent concerning any inquiries I conduct under subsection 48(2) of the *Code* and any inquiry reports I prepare under subsection 48(12).

These, and other provisions, ensure that I am able to carry out my functions – providing considered advice to senators and conducting, where necessary, investigations and inquiries – in an impartial manner, free from any outside influence or coercion.

Provisions of the *Parliament of Canada Act* that secure the independence of the Senate Ethics Officer

- The Officer is appointed by the Governor in Council, by Commission under the Great Seal, after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate. This is to ensure that the appointment has the broadest support of the Senate irrespective of political party line.

- The Officer is appointed for a term of seven years as an Officer of the Senate and may be removed from his or her office only for cause, by the Governor in Council, on address of the Senate. These provisions again confer on the Officer a status of independence and autonomy rarely recognized to Government officials and they provide an effective shield against improper or inappropriate influence.

- The Officer has the rank of a deputy head of a department of the Government of Canada and has the control and the management of the office, which he or she runs independently from the Senate and its Internal Economy Committee. The Officer hires his or her own staff.

- The Officer has the responsibility for preparing the estimate of the sums required to pay the charges and expenses of the office. This estimate is separate from the estimates of the Senate. The Speaker of the Senate, after considering the estimate, transmits it to the President of the Treasury Board who lays it before the House of Commons with the estimates of the Government for the fiscal year. The Senate reviews the Officer's proposed budget as a part of the annual review of the Main Estimates. This procedure ensures the independence of the Officer and places the responsibility for the estimate of the office on the Senate Ethics Officer. It also emphasizes the direct relationship that Parliament has established between the Officer and the Senate itself, to which the Officer ultimately reports.

- The Officer is required, within three months after the end of each fiscal year, to submit a report of his or her activities to the Speaker of the Senate, who must table the report in the Senate.

D. Accountability of the Senate Ethics Officer

While I am an independent Officer of the Senate, I am also accountable to the Senate in a number of ways and this accountability is as important as my independence.

I am accountable to the Senate as a whole for my office's overall performance. For example, I am required to prepare an annual report on the activities of my office and this report is tabled in the Senate.

I am also accountable to the Senate for the financial operations of my office. The Senate may review my budget as part of the annual review of the estimates of the government. The office's financial statements are audited each year by an external auditor and the results are posted on our website once the audit is completed. In addition, my hospitality and travel expenses, as well as office contracts that exceed $10,000, are posted on the office's website.

I am also directly accountable to the Standing Committee on Conflict of Interest for Senators. The *Parliament of Canada Act* establishes this relationship in subsection 20.5(3), which provides that the Senate Ethics Officer carries out his or her duties and functions under the general direction of a committee of the Senate. The Senate Ethics Officer appears annually before this Committee in order to discuss the annual report of the activities of the office.

The Committee also has a role to play with respect to investigations and inquiries under the Code. It receives the inquiry reports of the Senate Ethics Officer and makes them public. It then considers these reports and thereafter prepares its own reports to the Senate, in which it may recommend appropriate sanctions.

The Committee also undertakes comprehensive reviews of the Code. During these reviews, the Senate Ethics Officer is provided with an opportunity to make submissions to the Committee concerning amendments to the Code. Again, this assures a further measure of accountability on the part of the Senate Ethics Officer in that it requires that the Senate Ethics Officer examine the Code with a view to recommending improvements on an ongoing basis. Of course, the Committee is ultimately responsible for recommending changes to the Code to the Senate, and the Senate is ultimately responsible for adopting any such changes.

II. THE YEAR IN REVIEW: 2013-14

A. Amendments to the *Conflict of Interest Code for Senators*

On April 1, 2014, the Senate adopted the Third Report of the Standing Committee on Conflict of Interest for Senators (the Committee), which recommended amendments to the *Conflict of Interest Code for Senators* (the Code) that would come into force on the date of adoption by the Senate. A copy of the Committee's report is included in Appendix B to this report and a copy of the new Code is included in Appendix C.

These amendments primarily made changes to the inquiries portion of the Code. While other portions of the Code have been amended since 2005 when the Code was first adopted by the Senate, the inquiries section had remained largely unchanged since then.

I was provided with an opportunity to make submissions to the Committee in this area and I appreciated the opportunity to do so.

The Committee described its objectives in recommending these changes to the Senate as follows:

- to establish and confirm that senators are aware of their obligations under the Code;
- to strengthen preventive measures under the Code;
- to establish a clear, fair and balanced inquiry process;
- to enhance the independence of the Senate Ethics Officer; and
- to increase the openness and transparency of the Senate conflict of interest regime.

More specifically, the new Code requires senators to annually file a statement confirming that they have read the Code within the last 30 days and that they are in compliance with it to the best of their knowledge and belief. This measure ensures that senators are aware of their obligations under the Code and continue to review these obligations annually. It is preventative in nature and builds on the principle that preventing conflicts is preferable to dealing with them once they have already arisen. This obligation did not exist under the previous version of the Code.

The amendments will also ensure that the preliminary review process is more formal and transparent. This is the preliminary stage at which the Senate Ethics Officer must review the information available to him or her in order to make a determination as to whether an inquiry is warranted under the circumstances.

Under the previous version of the Code, the decision of the Senate Ethics Officer at the preliminary review stage was not publicly available. Only in cases where the Senate Ethics Officer decided to proceed to the inquiry stage would the matter eventually become a matter of public record. This is because if an inquiry report is prepared, it is tabled in the Senate and, upon tabling, becomes a public document.

However, if the decision of the Senate Ethics Officer was not to proceed to the inquiry stage, then the reasons for this decision would not become public.

As a result of the amendments, the preliminary review decision letter will be made public where an inquiry is not justified if the subject matter of the inquiry is publicly known. If, on the other hand, an inquiry is justified, the preliminary review decision letter would remain confidential but the inquiry report would be tabled in the Senate, at which time it would become a public document.

The new changes will also alter the manner in which an inquiry may be initiated. Under the previous version of the *Code*, an inquiry could be initiated in one of three ways: (a) at the direction of the Committee; (b) at the request of another senator; or (c) at the initiative of the Senate Ethics Officer, with the approval of the Committee.

The amendments removed the Committee's authority to direct the Senate Ethics Officer to initiate an inquiry. In addition, the Senate Ethics Officer is no longer required to seek the approval of the Committee before self-initiating an inquiry.

Moreover, under the previous version of the *Code*, the Senate Ethics Officer could only self-initiate an inquiry if he or she had received "significant evidence" leading him or her to believe that an inquiry was warranted under the circumstances. Under the revised *Code*, the Senate Ethics Officer may self-initiate an inquiry if he or she has "reasonable grounds to believe" that a senator may have breached his or her obligations under the *Code*.

The amendments ensure that the Senate Ethics Officer is completely independent in his or her decision as to whether or not to self-initiate an inquiry ensuring that the Committee is at arm's length in respect of this decision. They also ensure that the evidentiary test for proceeding with an inquiry is the same as that that is applicable to inquiries conducted by legislative ethics commissioners in most other Canadian jurisdictions, i.e., "reasonable grounds to believe".

Building on the above-mentioned amendments to enhance the independence of the Senate Ethics Officer, the changes will also ensure that the Committee will no longer reinvestigate a matter already inquired into by the Senate Ethics Officer. Under the previous version of the *Code*, the Committee could conduct its own investigation of the matter after the Senate Ethics Officer had completed his or her inquiry report whereas, under the revised *Code*, the Committee's role is to recommend to the Senate the appropriate remedial measures or sanctions in any given case. These recommendations would be based on the findings of the Senate Ethics Officer in his or her inquiry report.

Again, these changes enhance the independence of the Senate Ethics Officer in the inquiry process because they leave the carrying out of the process to the Senate Ethics Officer and ensure that the Committee is at arm's length in terms of this process.

In addition, the previous version of the *Code* did not stipulate a list of remedial measures or sanctions that might be imposed on a senator who was the subject of an inquiry report that found that he or she had contravened one or more of the

provisions of the Code. The amendments address this by providing a non-exhaustive list of possible remedial measures and sanctions that the Committee may recommend in its report to the Senate.

The changes will also clarify that, where a matter is under investigation by another authority, the Senate Ethics Officer will only be authorized to suspend his or her preliminary review or inquiry (and the Committee would only be authorized to suspend its study) where the review or inquiry (or study in the case of the Committee) could prejudice the other investigation that is underway. I should note, however, that though this was not explicit in the previous version of the *Code*, my policy was to suspend only where I believed there was a risk of prejudice in continuing to inquire into the matter under the *Code* while an investigation by another authority was running parallel to my review or inquiry into the same matter.

Finally, the amendments expressly authorize the Senate Ethics Officer to provide general information to the public about the conflict of interest regime for senators and to inform the public about the status of a preliminary review or inquiry. The changes also require public documents concerning inquiries to be posted on the office's website. These amendments increase transparency by ensuring that the public has more access to information concerning inquiries.

I commend the Committee for recommending to the Senate these sweeping changes to the inquiries provisions of the *Code*, and the Senate for adopting them. In my view, they significantly improve the inquiry process that existed under the previous version of the *Code* by making it more transparent and leaving the process to be carried out independently by the Senate Ethics Officer with the Committee's role limited to recommending sanctions and remedial action after an inquiry is conducted – a role which is consistent with that carried out by other legislative bodies in Canada in this area.

B. Opinions and Advice

As noted in my annual report of last year, the primary role of the Senate Ethics Officer is an advisory one. Opinions and advice are provided to senators in order to assist them in complying with their obligations under the *Code*.

This year, we provided approximately 350 opinions and advice to senators of both a formal and informal nature. This is an increase in the number of requests for opinions and advice received in previous years.

C. Annual Disclosure Process

The office continued to respond to a higher volume of requests from senators concerning their disclosure obligations as a result of the 2012 changes to the *Code*, many of which involved additional disclosure requirements concerning both senators and their spouses and common-law partners. These changes are still relatively new and, as such, senators continued to ask for guidance on the application of these new requirements to their individual circumstances.

D. Inquiries

The office is conducting its first inquiry since its establishment in 2005. This inquiry is based on a request from a senator under subsection 44(2) of the *Code*.[1] At the time of the writing of this report, it is still ongoing.

The office also received two other requests for inquiries under subsection 44(2) of the *Code*.[2] I conducted a preliminary review of these matters and, under the *Code* which was applicable at the time these requests were filed with my office, the preliminary review decisions were not to be made publicly available.

As a result of these requests, the office was, for the first time, required to interpret and apply the inquiry provisions of the *Code*.

E. Outreach and External Activities

The office participates annually in conferences and seminars that focus on conflict of interest issues, and ethics issues more generally. These activities ensure that the office continues to share best practices with other organizations that have responsibilities and mandates similar to our own and to ensure that we continue to engage in dialogues with other jurisdictions about these issues.

This year, the office participated in the annual conference of the Canadian Conflict of Interest Network (CCOIN), which took place in Ottawa, Ontario from September 4 to 6, 2013. CCOIN is comprised of the various ethics and conflict of interest commissioners across the country at the federal, provincial and territorial levels of government -- those who have jurisdiction over members of legislative bodies. We gather together as a group on an annual basis to discuss issues of common interest and to seek the thoughts and views of colleagues concerning matters related to conflict of interest and ethics.

The office also met with a delegation from Kenya on October 29, 2013 in order to provide information concerning the conflict of interest regime in the Senate.

On both November 6, 2013 and on February 12, 2014, I addressed the participants of the Parliamentary Officers' Study Program. This program is designed to provide opportunities for senior parliamentary staff from other Canadian legislatures and foreign legislatures to learn about the Canadian Parliament, and to discuss and exchange views with senior Canadian parliamentary officials on the various procedural, administrative and research services provided to parliamentarians. The program involves the Senate, the House of Commons and the Library of Parliament and takes place in Ottawa.

I also attended the 2013 annual conference of the Council on Governmental Ethics Laws (COGEL), which was held in Québec City from December 7 to 11, 2013.

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[1] The reference here is to the *Code* adopted by the Senate in May 2012, which came into force on October 1, 2012.

[2] *Ibid.*

COGEL is a professional organization for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. Membership is drawn principally from groups or individuals from the United States and Canada, with some European, Australian, and Latin American members as well.

In addition to sharing information about the Senate ethics regime through our participation in conferences and seminars, the office website is also a tool for providing information to those who are interested in this area and to the public in general concerning the mandate of the Senate Ethics Officer and the work of the office. Over the years, the office has received a fairly large number of visits to the website and this year was no exception with 18, 171 visits.

F. Budget

For the year 2013-2014, the Office's total authorities were $934,294. Actual expenditures were $765,918.

The office's financial statements for the year 2013-2014 are being audited by the firm Ernst and Young. The results of this report, as well as the financial statements, will be posted on the office's website once the audit is completed.

III. THE CODE IN PRACTICE: SELECTED EXAMPLES

The following is a list of examples of cases that illustrate how the *Conflict of Interest Code for Senators* (the Code) is applied to specific fact scenarios. They are intended to help the reader better understand the provisions of the Code and to highlight some of the more important rules with which senators must comply.

It should be noted, however, that these cases have been abbreviated and, as such, do not reflect the level of detail that may be provided in opinions and advice given to senators. The opinions and advice are based on a careful analysis of the provisions of the Code and of each senator's circumstances, whereas the cases below are for illustrative purposes only and are intended to be educational and informative.

A. Activities Outside Official Parliamentary Duties

General

1. Issue

To what extent does the Code permit senators to engage in activities outside their parliamentary duties and functions?

Considerations

Section 5 of the Code authorizes senators, who are not Ministers of the Crown, to participate in activities outside their parliamentary duties and functions, as long as they are able to fulfill their obligations under the Code. For example, senators are permitted to sit as members of boards of directors of not-for-profit and for-profit organizations provided these activities do not result in a senator running afoul of any provisions of the Code. In order to avoid this, certain restrictions and conditions could be recommended.

However, senators are required to disclose these outside activities to the Senate Ethics Officer, who then makes this information available to the public.

It is worth noting that the rules that apply to Cabinet ministers are much more restrictive than those that apply to senators and members of the House of Commons, reflecting the fact that Cabinet ministers have considerable executive powers. The role, responsibilities and powers of legislators are, however, quite distinct with the result that both senators and members of the House of Commons are permitted certain outside activities.

B. Sponsored Travel

Sponsored Travel (General)

2. Issue

Under what circumstances does the Code permit senators to accept sponsored travel?

Considerations

Subsection 18(1) of the Code provides that a senator and guests of the senator may

accept sponsored travel if it arises or relates to the senator's position. Where the cost of any such travel exceeds $500 and is not paid for by the senator or any guests of the senator, or through international and interparliamentary affairs programs recognized by the Parliament of Canada, or by the Senate, the Government of Canada or the senator's political party, the trip must be disclosed to the Senate Ethics Officer within 30 days after the end of it. As well, paragraph 31(1)(*j*) requires that any such trip be publicly disclosed.

Parliamentary associations

3. Issue

Does a senator have to declare sponsored travel that is paid by a parliamentary association for the purpose of attending meetings abroad?

Considerations

Subsection 18(1) of the Code provides that sponsored travel paid through the programs for international and interparliamentary affairs of the Parliament of Canada need not be reported to the Senate Ethics Office, nor must it be publicly declared, since these associations are funded by Parliament.

Foreign governments

4. Issue

A senator is invited by a foreign government to attend meetings abroad as part of his or her parliamentary duties and functions. The host country is offering to pay the travel and accommodation costs. Is the senator permitted to accept the offer under the Code?

Considerations

Under subsection 18(1), sponsored travel that arises from or relates to a senator's position is acceptable. However, if the cost of the travel exceeds $500, the senator would be required to file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. This statement would include the name of the government paying for the trip, the purpose and length of the trip, as well as a general description of the benefits received [subsection 18(2)]. This information would then be placed on the senator's public file under paragraph 31(1)(*j*) of the Code.

C. Gifts and Other Benefits

Golf memberships

5. Issue

Is a senator permitted to accept a free membership in a golf club? This membership has been offered in his or her capacity as a senator.

Considerations

The senator is not permitted to accept this benefit since it could reasonably be considered to relate to the senator's position and, as such, would fall under subsection 17(1) of the Code.

Honorariums and Gifts for Speeches

6. Issue

Is a senator permitted to accept an honorarium for giving a speech at a conference?

Considerations

Whether the honorarium is acceptable depends on the particular circumstances. If the senator's participation at the conference is related to his or her parliamentary duties and functions and if the specific expertise was acquired in the Senate, the honorarium may not be accepted [subsection 17(1) of the Code]. However, the senator may accept an honorarium if the speech is given in connection with an outside or professional activity, the expertise was acquired before the senator was appointed to the Senate, and the honorarium cannot reasonably be seen to have been given to influence the senator. In cases of doubt, the Senate Ethics Officer should be consulted.

7. Issue

Is a senator permitted to accept a gift as an expression of appreciation for delivering a speech at a conference in which he or she participated in his or her capacity as a senator?

Considerations

The gift may be accepted under subsection 17(2) of the Code since it is "a normal expression of courtesy or protocol" and is "within the customary standards of hospitality that normally accompany [a] senator's position". However, if the value of the gift exceeds $500, a declaration must be filed with the Senate Ethics Office within 30 days after the receipt of the gift, in accordance with subsection 17(3) of the Code. This declaration must then be filed in the senator's public file under paragraph 31(1)(*j*).

8. Issue

Is a senator permitted to request that, instead of accepting a gift offered as a token of appreciation for having given the keynote address at an event, a donation be made to a charitable organization of the senator's choice? The senator is participating in the event as part of his or her parliamentary duties and functions.

Considerations

The senator may make such a request provided he or she does not receive any benefit, directly or indirectly, from the donation [subsection 17(1) of the Code]. The donation should be given directly by the event organizer to the charitable organization and any income tax receipt should be provided to the sponsor of the conference, not to the senator.

D. Federal Contracts

Federal Contracts (Family members)

9. Issue

Is a senator's spouse or common-law partner permitted to be a party to a contract with the federal government?

Considerations

A senator's spouse or common-law partner may be a party to a federal government contract under the Code. However, confidential disclosure to the Senate Ethics Officer is necessary under paragraph 28(1)(g) and a public declaration is required under paragraph 31(1)(g) of the Code. Furthermore, the senator would be advised to refrain from making representations, on behalf of his or her spouse or common-law partner, to the Government of Canada or any federal agency or body in order to obtain or extend contracts, or from acting in any way to further his or her spouse's or common-law partner's private interests, or his or her own private interests, as defined under subsection 11(1) of the Code. Under section 9 and paragraph 2(1)(c) of the Code, his or her spouse or common-law partner should not receive, or appear to receive, preferential treatment or unfair advantage in the awarding of federal contracts due to representations made by the senator on his or her spouse's or common-law partner's behalf.

E. Declarations of Private Interest

Procedure for Declaration of a Private Interest

10. Issue

What are the circumstances under which a senator must make a declaration of a private interest in the Senate or in a committee of which he or she is a member; the manner in which a declaration must be made; and the restrictions that would be imposed upon him or her under such circumstances?

Considerations

Under subsection 12(1), a senator must make a declaration of a private interest if he or she has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of the Senate of which the senator is a member. The senator must make the declaration at the earliest opportunity. It may be made orally on the record or in writing to the Clerk of the Senate if the matter is before the Senate, or to the Clerk of the committee if the matter is before a committee. The declaration will be recorded in the *Journals of the Senate* if it was made in the Senate, or in the *Minutes of Proceedings* of the committee if it was made in committee. It is then sent to the Senate Ethics Officer, who must file it in the senator's public disclosure file [subsection 12(3) and paragraph 31(1)(*i*)]. This file is in the Public Registry, along with all other senators' public disclosure files, at the Office of the Senate Ethics Officer, as well as on the office's website [section 33].

Once the senator makes a declaration of a private interest in the Senate or in the relevant committee, he or she may not participate in debate or any other deliberations in the Senate or in a committee with respect to that matter [subsections

13(1) and (2)] and he or she may not vote on the matter but may abstain [section 14]. In addition, if the matter is before a Senate committee, the senator must also withdraw altogether from the proceedings in question [subsections 13(2)].

Matter specifically relates to Senator's Company

11. Issue

Is a senator required to make a declaration of a private interest where he or she is a member of the board of directors of company "A" and a matter before the Senate specifically relates to company "A"?

Considerations

A declaration of a private interest would be required under subsection 12(1) of the Code since the subject matter being discussed in the Senate affects the senator's private interest as defined under subsection 11(1) of the Code. The senator may not participate in debate on the matter [subsection 13(1)] and may not vote [section 14]. A declaration of a private interest may be made orally on the record or in writing to the Clerk of the Senate, in accordance with the procedure set out in subsection 12(1) of the Code.

Not Official Committee Member

12. Issue

A senator is not an official member of a particular committee of the Senate; however, he or she does participate in its proceedings from time to time. A matter is before this committee in which he or she has a private interest. Since the senator is not an official committee member, what are the rules that apply to him or her under the circumstances?

Considerations

Notwithstanding that the senator may not be an official member of this particular committee, he or she is still prohibited from participating in its proceedings if they concern a matter in which he or she has a private interest [subsection 13(3)]. In fact, the senator would also be required to withdraw from the relevant proceedings altogether [subsection 13(3)].With respect to voting, he or she would not be entitled to vote on the matter given that he or she is not an official member of the committee.

F. Furthering Private Interests

Influence

13. Issue

In what circumstances would section 9 of the Code (use of influence) be relevant?

Considerations

Section 9 of the Code is aimed at ensuring that senators do not use, or attempt to use, their position as senators in order to influence the decisions of individuals, entities, or governments in order to benefit themselves or their family members or to improperly benefit another person or entity in any manner listed under subsection 11(1) of the Code. The provision is very broad and is not limited to influencing decisions of governments to further private interests, although the use of influence in regards to

decisions of government respecting the awarding of contracts or other financial benefits is always of particular concern.

The advice provided to a senator concerning how to ensure that he or she remains in compliance with section 9 would depend upon the particular facts of the case. However, in cases involving decisions of government, senators would, for example, be cautioned against personally having any dealings with government officials in order to obtain, or seek to obtain, a financial benefit, including contracts or financial assistance, on behalf of themselves, their family members, or on behalf of any entities where to do so would be improper (for example, on behalf of a private corporation in which the senator, or a family member of the senator, holds a position on the board of directors). This would include arranging or facilitating meetings with government officials. Taking this precaution also addresses the perception of a conflict [paragraph 2(1)(c)] under section 9.

G. Investigations and Inquiries

Process for Making a Complaint against another Senator

14. Issue

What is the process for initiating a complaint against another senator?

Considerations

A senator who has reasonable grounds to believe that another senator has not complied with his or her obligations under the Code may request that the Senate Ethics Officer conduct an inquiry into the matter under paragraph 47(2)(*b*). The request for an inquiry must be in writing and must be signed by the initiating senator; it must also identify the alleged non-compliance and the reasonable grounds for the belief that the Code has not been complied with [subsection 47(3)]. If such a request is received, the Senate Ethics Officer is required to conduct a preliminary review of the matter [paragraph 47(2)(*b*)].

The Senate Ethics Officer must, pursuant to paragraph 47(4)(*b*), notify the senator who is the subject of the preliminary review and provide him or her with a copy of the request received from the senator who made the request. In addition, the Senate Ethics Officer is required to provide the senator who is the subject of the preliminary review with 15 days within which to respond to the request for an inquiry [subsection 47(7)].

The Senate Ethics Officer must then conduct a preliminary review confidentially under subsection 47(5) of the Code in order to determine whether or not an inquiry is in fact warranted [subsection 47(1)]. If the Senate Ethics Officer determines that an inquiry is not warranted, the preliminary determination letter is made public (unless the matter is not in the public domain) when the Chair of the Standing Committee on Conflict of Interest for Senators tables it in the Senate at the first possible opportunity, pursuant to subsection 47(17) of the Code. If the Senate Ethics Officer determines that an inquiry is warranted, the matter remains confidential until the inquiry report of the Senate Ethics Officer is tabled in the Senate [subsections 48(17), (18) and (19)].

APPENDICES

APPENDIX A

Relevant Excerpts from the *Parliament of Canada Act*

Relevant Excerpts from the Parliament of Canada Act, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c. 9, sections 20.1 to 20.7

SENATE ETHICS OFFICER

Appointment

20.1 The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

Tenure

20.2 (1) The Senate Ethics Officer holds office during good behaviour for a term of seven years and may be removed for cause by the Governor in Council on address of the Senate. He or she may be reappointed for one or more terms of up to seven years each.

Interim appointment

(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

Remuneration

20.3 (1) The Senate Ethics Officer shall be paid the remuneration set by the Governor in Council.

Expenses

(2) The Senate Ethics Officer is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties or functions while absent from his or her ordinary place of residence, in the case of a part-time appointment, and ordinary place of work, in the case of a full-time appointment.

Functions - part-time

(3) In the case of a part-time appointment, the Senate Ethics Officer may not accept or hold any office or employment - or carry on any activity - inconsistent with his or her duties and functions under this Act.

Functions - full-time

(4) In the case of a full-time appointment, the Senate Ethics Officer shall engage exclusively in the duties and functions of the Senate Ethics Officer and may not hold any other office under Her Majesty or engage in any other employment for reward.

Deputy head

20.4 (1) The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and has the control and management of the office of the Senate Ethics Officer.

Powers to contract

(2) The Senate Ethics Officer may, in carrying out the work of the office of the Senate Ethics Officer, enter into contracts, memoranda of understanding or other arrangements.

Staff

(3) The Senate Ethics Officer may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Senate Ethics Officer considers necessary for the proper conduct of the work of the office of the Senate Ethics Officer.

Authorization

(4) The Senate Ethics Officer may, subject to the conditions he or she sets, authorize any person to exercise any powers under subsection (2) or (3) on behalf of the Senate Ethics Officer that he or she may determine.

Salaries

(5) The salaries of the officers and employees of the office of the Senate Ethics Officer shall be fixed according to the scale provided by law.

Payment

(6) The salaries of the officers and employees of the office of the Senate Ethics Officer, and any casual expenses connected with the office, shall be paid out of moneys provided by Parliament for that purpose.

Estimates to be prepared

(7) Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the office of the Senate Ethics Officer during the fiscal year.

Inclusion in Government estimates

(8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

Duties and functions

20.5 (1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

Privileges and

(2) The duties and functions of the Senate Ethics Officer are

immunities — carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

General direction of committee — (3) The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

Conflict of Interest Act — (4) For greater certainty, the administration of the *Conflict of Interest Act* in respect of public office holders who are ministers of the Crown, ministers of state or parliamentary secretaries is not part of the duties and functions of the Senate Ethics Officer or the committee.

Clarification - powers, etc., of the Senate — (5) For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.

No summons — **20.6** (1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.

Protection — (2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.

Clarification — (3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.

Annual report — **20.7** (1) The Senate Ethics Officer shall, within three months after the end of each fiscal year, submit a report on his or her activities under section 20.5 for that year to the Speaker of the Senate, who shall table the report in the Senate.

Confidentiality — (2) The Senate Ethics Officer may not include in the annual report any information that he or she is required to keep confidential.

APPENDIX B

Third Report of the Standing Committee on Conflict of Interest for Senators, Wednesday, March 26, 2014 (proposed amendments to the *Conflict of Interest Code for Senators*)

REPORT OF THE COMMITTEE

Wednesday, March 26, 2014

The Standing Committee on Conflict of Interest for Senators has the honour to present its

THIRD REPORT

Your committee, which is responsible on its own initiative for all matters relating to the Conflict of Interest Code for Senators, pursuant to rule 12-7(16) of the Rules of the Senate, has undertaken a study on the provisions of the Code, and reports as follows:

The Standing Committee on Conflict of Interest for Senators exercises general and constant oversight over the conflict of interest regime applicable to Senators. As part of this mandate, the Committee is regularly assessing and reviewing the Code to make improvements that respond adequately to events that come to light and to changes in our society. Accordingly, the Committee is now proposing amendments to the inquiry process under the Code.

The objectives of these amendments are

- to establish and confirm that Senators are aware of their obligations under the Code;
- to strengthen preventive measures under the Code;
- to establish a clear, fair and balanced inquiry process;
- to enhance the independence of the Senate Ethics Officer (SEO); and
- to increase the openness and transparency of the Senate conflict of interest regime.

Inquiry Process — General

Current Provisions

The current provisions of the Code on the inquiry process have remained mostly unchanged since the adoption of the Code in 2005. The Committee considers that amendments to the current provisions would result in a better, clearer and more structured inquiry process.

Proposed Amendments

The inquiry process would be streamlined. Each stage of the process (that is, the preliminary review, the inquiry by the SEO and the study by the Committee) would be established step by step, in clear and unambiguous language.

Rationale

These amendments would establish a clear, fair and balanced inquiry process.

Preventive Enforcement

Current Provisions

Under the current Code, Senators are not required to make an express periodic statement affirming that they have read the Code and are in compliance with it to the best of their knowledge.

Proposed Amendments

Senators would be required to file annually with the SEO a statement affirming that they have read the Code within the previous 30 days and stating that they are in compliance with it to the best of their knowledge.

Rationale

These amendments would establish and confirm that Senators are aware of their obligations under the Code. They would also strengthen preventive measures under the Code. This provision is the evolving norm in conflict of interest codes.

Preliminary Review

Current Provisions

A preliminary review is conducted by the SEO to decide if an inquiry is warranted to determine whether a Senator has not complied with his or her obligations under the Code. Under the current provisions of the Code, the SEO does not have to prepare an official document stating his or her conclusion as to the necessity of an inquiry.

Proposed Amendments

The SEO would prepare a preliminary determination letter stating his or her reasoned decision on whether a full inquiry is justified to determine whether a Senator has not complied with his or her obligations under the Code. This letter would be made public if the subject-matter of the inquiry is known publicly and no inquiry is justified. The preliminary determination letter would in all cases be provided to the Senator who is the subject of the review and, if applicable, to the Senator who initiated the review.

Rationale

These amendments would clarify the inquiry process by making clear the outcome of the preliminary review. They would also increase the openness and transparency of the Senate conflict of interest regime.

Initiating an Inquiry by the SEO

Current Provisions

Under the current Code, an inquiry is conducted by the SEO to determine whether or not a Senator has complied with his or her obligations under the Code. There are three different ways to initiate an inquiry:

- the Committee may instruct the SEO to conduct an inquiry;
- a Senator may request that the SEO conduct an inquiry, and the SEO will conduct such an inquiry if, after a preliminary review of the matter, he or she decides that an inquiry is warranted; or
- the SEO may self-initiate a preliminary review and, with the approval of the Committee, conduct an inquiry if he or she believes it is warranted.

Proposed Amendments

The Committee would no longer be empowered to instruct the SEO to conduct an inquiry. The Committee would also no longer have to approve an inquiry where the SEO believes an inquiry is warranted after having conducted a preliminary review.

Rationale

These amendments would establish a clear, fair and balanced inquiry process. They would enhance the independence of the SEO. They would keep the Committee at arm's length from the inquiries and related processes conducted by the SEO.

Role of the Committee

Current Provisions

Under the current provisions of the Code, the Committee conducts its own investigation once the SEO has completed his or her inquiry report. Existing provisions were updated in May 2012 to ensure the integrity of the SEO's inquiry report.

Proposed Amendments

The role of the Committee in the inquiry process would be clarified. It would no longer reinvestigate a matter already inquired into by the SEO. The role of the Committee would be to recommend the appropriate remedial measures or sanctions, based on the findings made by the SEO in his or her report.

Rationale

These amendments would establish a clear, fair and balanced inquiry process. They would enhance the independence of the SEO, and address the risk of interference in a fair hearing by the Senators on the Committee.

Sanctions and Remedial Measures

Current Provisions

The current provisions of the Code state that the Committee may recommend remedial measures or sanctions in its report to the Senate. They do not, however, enumerate remedial measures or sanctions that the Committee may recommend.

Proposed Amendments

The Code would list remedial measures or sanctions that the Committee may recommend after inquiry; measures would range from no action to suspension of senators.

Rationale

These amendments would clarify the inquiry process, and ensure the Committee's role in assessing what is in the best interests of the Senator, the Senate and the public.

Suspension of Process

Current Provisions

The SEO and the Committee are authorized to suspend their inquiry or investigation when the same matter is investigated by proper authorities or charges have been laid. In practice, the process is suspended as soon as the matter is investigated.

Proposed Amendments

When a matter is under investigation by proper authorities, the SEO and the Committee would be authorized to suspend their preliminary review, inquiry or study only when it could prejudice the investigation by proper authorities or pursuant to a written request by proper authorities. However, once charges are laid, the preliminary review, inquiry or study would be suspended until final disposition of the charges.

Rationale

These amendments would clarify the circumstances justifying the suspension of the inquiry process. They would also strengthen the inquiry process by ensuring that the examination of a matter is suspended only when the circumstances so warrant, and would draw a distinction between a criminal matter (under other authorities) and disciplinary process for the Senate.

Public Communications

Current Provisions

The Code provides that the summary and other related documents of each Senator's disclosure statement are made public and available on the website of the SEO. Aside from these provisions, the Code is silent on the information the SEO may provide to the public.

Proposed Amendments

The SEO would be expressly authorized to provide general information about the Senate conflict of interest regime to the public. He or she would also be authorized to inform the public of the status of a preliminary review or inquiry. Public documents relating to the general inquiry process would be posted on the website of the SEO.

Rationale

These amendments would make more information respecting the Senate conflict of interest regime available to the public. They would increase the openness and transparency of the Senate conflict of interest regime.

Recommendations and Coming into Force

These proposed amendments would replace the provisions of the existing Code dealing with inquiries and investigations with new ones, while also making some minor consequential amendments to other. The Code, with the recommended amendments integrated into it, is attached as an Appendix to this report.

Your Committee recommends that these proposed amendments be adopted.

Your Committee further recommends that these amendments come into force upon their adoption, provided that matters already under preliminary review or inquiry by the SEO or under investigation by the Committee remain governed at all stages of the process by the provisions of the Code as they read before these amendments come into force.

Finally, these amendments to the Code would require consequential amendments to the Rules of the Senate. Your committee further recommends, therefore, that the Standing Committee on Rules, Procedures and the Rights of Parliament undertake a study with the view to recommend the appropriate consequential amendments to the Rules of the Senate.

Respectfully submitted,

RAYNELL ANDREYCHUK

Chair

APPENDIX C

Conflict of Interest Code for Senators

CONFLICT OF INTEREST CODE FOR SENATORS

PURPOSES

Purposes

1. The purposes of this Code are to

(*a*) maintain and enhance public confidence and trust in the integrity of Senators and the Senate;

(*b*) provide for greater certainty and guidance for Senators when dealing with issues that may present foreseeable real or apparent conflicts of interest; and

(*c*) establish clear standards and a transparent system by which questions relating to proper conduct may be addressed by an independent, non-partisan adviser.

PRINCIPLES

Principles

2. (1) Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

(*a*) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;

(*b*) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and

(*c*) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.

Privacy

(2) The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.

INTERPRETATION

Definitions

3. (1) The following definitions apply in this Code.

"Committee"
« *Comité* »

"Committee" means the Committee designated or established under section 35.

"common-law partner"
« *conjoint de fait* »

"common-law partner" means a person who is cohabiting with a Senator in a conjugal relationship, having so cohabited for at least one year.

"Intersessional Authority"
« *autorité intersessionnelle* »

"Intersessional Authority on Conflict of Interest for Senators" means the committee established by section 38.

"parliamentary duties and functions"
« *fonctions parlementaires* »

"parliamentary duties and functions" means duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.

"Senate Ethics Officer"
« *conseiller sénatorial en éthique* »

"Senate Ethics Officer" means the Senate Ethics Officer appointed under section 20.1 of the *Parliament of Canada Act*.

"spouse"
« *époux* »

"spouse" means a person to whom a Senator is married but does not include a person from whom the Senator is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

Family members

(2) The following are the family members of a Senator for the purposes of this Code:

(*a*) a Senator's spouse or common-law partner; and

(*b*) a child of a Senator, a child of a Senator's spouse or common-law partner, or a person whom a Senator treats as a child of the family, who

(i) has not reached the age of 18 years, or

(ii) has reached that age but is primarily dependent on a Senator or a Senator's spouse or common-law partner for financial support.

For greater certainty

(3) For greater certainty, a Senator who is on leave of absence, suspended or absent due to illness is required to comply with all requirements and obligations under the Code.

ACTIVITIES AND JURISDICTION PRESERVED

Assisting the public

4. Senators are encouraged to continue to assist members of the public as long as their actions are consistent with their obligations under this Code.

Carrying on activities

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

(*a*) engaging in employment or in the practice of a profession;

(*b*) carrying on a business;

(*c*) being a director or officer in a corporation, association, trade union or not-for-profit organization; and

(*d*) being a partner in a partnership.

Existing committee jurisdiction

6. Nothing in this Code affects the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Role of the Speaker

7. Procedural matters referred to in this Code that are expressly provided for in the *Rules of the Senate* are under the jurisdiction and authority of the Speaker rather than the Senate Ethics Officer.

RULES OF CONDUCT

Furthering private interests

8. When performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests or those of a family member, or to improperly further another person's or entity's private interests.

Use of influence

9. A Senator shall not use or attempt to use his or her position as a Senator to influence a decision of another person so as to further the Senator's private interests or those of a family member, or to improperly further another person's or entity's private interests.

Use of information

10. (1) If, as a result of his or her position, a Senator obtains information that is not generally available to the public, the Senator shall not use or attempt to use the information to further the Senator's private interests or those of a family member, or to improperly further another person's or entity's private interests.

Conveying information

(2) A Senator shall not convey or attempt to convey information referred to in subsection (1) to another person if the Senator knows, or reasonably ought to know, that the information may be used to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Clarification: furthering private interests

11. (1) In sections 8 to 10, furthering private interests of a person or entity, including the Senator's own private interests, means actions taken by a Senator for the purpose of achieving, directly or indirectly, any of the following:

(*a*) an increase in, or the preservation of, the value of the person's or entity's assets;

(*b*) the elimination or a reduction in the amount of the person's or entity's liabilities;

(*c*) the acquisition of a financial interest by the person or entity;

(*d*) an increase in the person's or entity's income from a contract, a business or a profession;

(*e*) an increase in the person's income from employment;

(*f*) the person becoming a director or officer in a corporation, association, trade union or not-for-profit organization; or

(*g*) the person becoming a partner in a partnership.

Clarification: not furthering private interests

(2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question

(*a*) is of general application;

(*b*) affects the Senator or the other person or entity as one of a broad class of the public; or

(*c*) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or of a Senate committee.

Declaration of a private interest: Senate or committee

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private

interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the clerk of the committee, as the case may be, but shall be made no later than the first occasion at which the Senator is present during consideration of the matter. The Speaker of the Senate shall cause the declaration to be recorded in the *Journals of the Senate* and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

Subsequent declaration

(2) If a Senator becomes aware at a later date of a private interest that should have been declared under subsection (1), the Senator shall make the required declaration forthwith.

Declaration recorded

(3) The Clerk of the Senate or the clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(*i*), shall file it with the Senator's public disclosure summary.

Where declaration *in camera*

(4) In any case in which the declaration was made during an *in camera* meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

Further declaration

(5) A declaration made *in camera* that, in compliance with subsection (4), has been neither recorded nor filed with the Senator's public disclosure summary is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity.

Declaration of a private interest: other circumstances

(6) In any circumstances other than those in subsection (1) that involve the Senator's parliamentary duties and functions, a Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected shall make an oral declaration regarding the general nature of the private interest at the first opportunity.

Declaration of retraction

(7) A Senator may, by declaration made under this section, retract a previous declaration, in which case the Senator may participate in debate or other deliberations and vote on the matter in respect of which the previous declaration was made.

Debate in the Senate

13. (1) A Senator who has made a declaration under section 12 regarding a matter that is before the Senate may not participate in debate or any other deliberations in the Senate with respect to that matter.

Debate in committee where Senator is member

(2) A Senator who has made a declaration under section 12 regarding a matter that is before a committee of the Senate of which the Senator is a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings, but the Senator need not resign from the committee.

Debate in committee where Senator is not member

(3) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of the Senate of which the Senator is not a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings.

Debate where Senator has not yet declared

(4) A Senator who is required by section 12 to make a declaration but has not yet done so may not participate in debate or any other deliberations on the matter and, in the case of committee proceedings, the Senator must withdraw from the committee for the duration of those proceedings.

Prohibition on voting

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

Procedure

15. If a Senator reasonably believes that another Senator has failed to make a declaration of a private interest as required by section 12 or has failed to comply with section 13 or 14, the matter may be raised with the Senate Ethics Officer.

Clarification: having a private interest

16. For the purpose of sections 12 to 14, "private interest" means those interests that can be furthered in subsection 11(1), but does not include the matters listed in subsection 11(2).

Prohibition: gifts and other benefits

17. (1) Neither a Senator, nor a family member, shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that could reasonably be considered to relate to the Senator's position.

Exception

(2) A Senator, and a family member, may, however, accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Senator's position.

Statement: gift or other benefit

(3) If a gift or other benefit that is accepted under subsection (2) by a Senator or his or her family member exceeds $500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds $500, the Senator shall, within 30 days after the gift or benefit is received or after that total value is exceeded, as the case may be, file with the Senate Ethics Officer a statement disclosing the nature and value of the gifts or other benefits, their source and the circumstances under which they were given.

Statement: sponsored travel

18. (1) Notwithstanding subsection 17(1), a Senator may accept, for the Senator and guests of the Senator, sponsored travel that arises from or relates to the Senator's position. If the travel costs of a Senator or any guest exceed $500 and are not paid personally by the Senator or the guest, and the travel is not paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator's political party, the Senator shall, within 30 days after the end of the trip, file a statement with the Senate Ethics Officer.

Contents of statement

(2) The statement shall disclose the name of the person or organization paying for the trip, the destination or destinations, the purpose and length of the trip, whether or not any guest was also sponsored, and the general nature of the benefits received.

Duplication

(3) Any disclosure made in relation to sponsored travel does not need to be disclosed as a gift or other benefit.

Consent of Senate

19. Gifts, other benefits and sponsored travel accepted in compliance with the requirements of sections 17

and 18 are deemed to have received the consent of the Senate thereto for all purposes.

Government contracts

20. A Senator shall not knowingly be a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that

(*a*) due to special circumstances the contract or other business arrangement is in the public interest; or

(*b*) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Public corporations

21. (1) A Senator may own securities in a public corporation that contracts with the Government of Canada or any federal agency or body unless the holdings are so significant that the Senate Ethics Officer provides a written opinion that they are likely to affect the Senator's obligations under this Code.

Public interest

(2) A contract between a public corporation and the Government of Canada or any federal agency or body that, in the Senate Ethics Officer's opinion, is in the public interest due to special circumstances, shall not preclude a Senator from holding securities in that public corporation.

Government programs

(3) For the purpose of subsection (1), a public corporation shall not be considered to contract with the Government of Canada or any federal agency or body merely because the corporation participates in a government program that meets the criteria described in section 23.

Trust

(4) If the Senate Ethics Officer is of the opinion that the Senator's obligations under this Code are likely to be affected under the circumstances of subsection (1), the Senator may comply with the Code by placing the securities in a trust under such terms as the Senate Ethics Officer considers appropriate.

Partnerships and private corporations

22. A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that

(*a*) due to special circumstances the contract or other business arrangement is in the public interest; or

(*b*) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Clarification: government programs

23. For the purposes of sections 20 and 22, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private corporation in which a Senator has an interest, receives a benefit if

(*a*) the eligibility requirements of the program are met;

(*b*) the program is of general application or is available to a broad class of the public;

(*c*) there is no preferential treatment with respect to the application; and

(*d*) no special benefits are received that are not available to other participants in the program.

Trust

24. Section 22 does not apply if the Senator has entrusted his or her interest in a partnership or private corporation to one or more trustees on all of the following terms:

(*a*) the provisions of the trust have been approved by the Senate Ethics Officer;

(*b*) the trustees are at arm's length from the Senator and have been approved by the Senate Ethics Officer;

(*c*) except as provided in paragraph (*d*), the trustees may not consult with the Senator with respect to managing the trust, but they may consult with the Senate Ethics Officer;

(*d*) the trustees may consult with the Senator, with the approval of the Senate Ethics Officer and in his or her presence, if an extraordinary event is likely to materially affect the trust property;

(*e*) in the case of an interest in a corporation, the Senator resigns any position of director or officer in the corporation;

(*f*) the trustees provide the Senate Ethics Officer annually with a written report setting out the nature of the trust property, the value of that property, the trust's net income for the preceding year and the trustees' fees, if any; and

(*g*) the trustees give the Senator sufficient information to permit the Senator to submit returns as required by the *Income Tax Act* and give the same information to the appropriate taxation authorities.

Pre-existing contracts

25. The rules in sections 20, 21 and 22 do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension.

Interest acquired by inheritance

26. The rules in sections 20, 21 and 22 do not apply to an interest acquired by inheritance until the first anniversary date of the transfer of legal and beneficial ownership. In special circumstances, the Senate Ethics Officer may extend this time period.

DUTY TO DISCLOSE

Confidential disclosure statement: sitting Senators

27. (1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential statement disclosing the information required by section 28.

Filing date

(2) The date or dates on or before which the annual confidential disclosure statements are required to be filed shall be established by the Senate Ethics Officer following approval by the Committee.

Confidential disclosure statement: new Senators

(3) Within 120 days after being summoned to the Senate, a Senator shall file a confidential statement disclosing the information required by section 28.

Submission to Committee

(4) Thirty days after the date established under subsection (2), the Senate Ethics Officer shall submit to the Committee the name of any Senator who has not complied with his or her duty to file a confidential disclosure statement.

Errors or omissions

(5) If, at any time after the date established under subsection (2), the Senate Ethics Officer has reason to believe that a Senator's confidential disclosure statement contains an error or omission, the Senate Ethics Officer shall notify the Senator concerned and request that the Senator provide the relevant information.

Response within 60 days

(6) Upon receipt of a request under subsection (5), the Senator shall provide the information within 60 days.

Family members

(7) In addition to any information required to be disclosed under subsection 28(1), a Senator may file with the Senate Ethics Officer a confidential disclosure statement relating to one or more of the Senator's family members so that the Senator may discuss their interests in relation to the Senator's obligations under this Code and receive advice in that regard.

Confidentiality

(8) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep all disclosure statements confidential.

Initial meeting with Senate Ethics Officer

(9) Senators, and in particular newly summoned Senators, who may have questions regarding their confidential disclosure duties should make every effort to meet with the Senate Ethics Officer before submitting their confidential disclosure statement.

Contents of confidential disclosure statement

28. (1) Subject to subsection (4) regarding excluded matters, and any guidelines published by the Senate Ethics Officer under section 43, the confidential disclosure statement shall list:

(*a*) any employment, profession or business in which the Senator or the Senator's spouse or common-law partner participates, including a description of the activities of the Senator, spouse or common-law partner;

(*b*) any corporations, income trusts and trade unions in which the Senator or the Senator's spouse or common-law partner is a director or officer, and any partnerships in which the Senator or the Senator's spouse or common-law partner is a partner, including a description of the activities of each entity;

(*c*) any associations and not-for-profit organizations in which the Senator or the Senator's spouse or common-law partner is a director, officer, or patron, including memberships on advisory boards and any honorary positions;

(*d*) the nature but not the amount of any source of income over $2,000 that the Senator or the Senator's spouse or common-law partner has received in the preceding 12 months and is likely to receive during the next 12 months; for this purpose,

(i) a source of income from employment is the employer,

(ii) a source of income from a contract is a party with whom the contract is made,

(iii) a source of income arising from a business or profession is that business or profession, and

(iv) a source of income arising from an investment is that investment;

(*e*) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has directly, or through a subcontract;

(*f*) the source, nature and value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries;

(*g*) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation;

(*h*) information regarding the nature but not the value of any assets and liabilities of the Senator or the Senator's spouse or common-law partner over $10,000; and

(*i*) any additional information that the Senator believes to be relevant to this Code.

Limitation

(2) For the purposes of subsection (1), a Senator is only required to disclose such information concerning the affairs of a spouse or common-law partner or other family member as the Senator is able to ascertain by making reasonable inquiries or of which the Senator has knowledge.

Standard of disclosure

(3) Where a Senator is required under this section or subsection 31(1) to disclose such information as the Senator is able to ascertain by making reasonable inquiries, the Senator's disclosure shall be to the best of the Senator's knowledge, information and belief.

Excluded matters

(4) For the purpose of subsection (1), it is not required to disclose properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; deposits with a financial institution; guaranteed investment certificates; financial instruments issued by any Canadian government or agency; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

Additional excluded matters

(5) The Senate Ethics Officer may, with the approval of the Committee, establish additional matters not required to be disclosed on the basis that they present no potential to interfere with the obligations of a Senator under this Code.

Material change

(6) A Senator shall report in writing any material change to the information relating to the confidential disclosure statement to the Senate Ethics Officer within 60 days after the change.

Meeting with Senate Ethics Officer

29. (1) After reviewing a Senator's confidential disclosure statement, the Senate Ethics Officer may request to meet with the Senator to discuss the statement and the Senator's obligations under this Code.

Necessary meeting

(2) If, pursuant to a request made under subsection (1), the Senate Ethics Officer advises the Senator that the meeting is necessary in order for the Senate Ethics Officer to carry out his or her duties and functions under the Code, the Senator shall meet with the Senate Ethics Officer.

Public disclosure summary

30. The Senate Ethics Officer shall prepare a public disclosure summary based on each Senator's confidential disclosure statement and submit it to the Senator for review.

Contents of public disclosure summary

31. (1) The public disclosure summary shall list

(*a*) any employment, profession and business in which the Senator participates, including a description of the activities of the Senator;

(*b*) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;

(*c*) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;

(*d*) the source and nature but not the amount of any income over $2,000 that the Senator has received in the preceding 12 months and is likely to receive in the next 12 months;

(*e*) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has, directly or through a subcontract, including the Senate Ethics Officer's written opinion authorizing them;

(*f*) the source and nature but not the value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries, including the Senate Ethics Officer's written opinion authorizing them;

(*g*) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;

(*h*) information regarding the nature but not the value of any assets and liabilities of the Senator over $10,000;

(*i*) any declarations of a private interest under section 12, unless the Senator has since retracted the declaration;

(*j*) any statements filed under sections 17 and 18 in relation to gifts and sponsored travel; and

(*k*) any statements of material change that pertain to the contents of this summary.

Discretion

(2) The Senate Ethics Officer need not include in the public disclosure summary information that he or she determines should not be disclosed because

(*a*) the information is not relevant to the purposes of this Code or is inconsequential, or

(*b*) a departure from the general principle of public disclosure is justified in the circumstances.

Disagreement

32. In cases of disagreement between a Senator and the Senate Ethics Officer regarding the contents of the public disclosure summary, the Senate Ethics Officer shall refer the disputed matter to the Committee for decision.

Public inspection

33. (1) Each public disclosure summary is to be placed on file at the office of the Senate Ethics Officer and made available for public inspection.

Removal of file from registry

(2) A public disclosure file shall be removed from the public registry at the time that the Senator concerned ceases to be a Senator.

Online access

(3) Every public disclosure summary available for public inspection under this section shall also be made available online on the website of the Senate Ethics Officer.

Evasion

34. A Senator shall not take any action that has as its purpose the evasion of the Senator's obligations under this Code.

COMMITTEE

Designation or establishment

35. (1) At the beginning of each session, a Committee of the Senate shall be designated or established for the purposes of this Code.

Membership

(2) The Committee shall be composed of five members, three of whom shall constitute a quorum.

No *ex officio* members

(3) The Committee shall have no *ex officio* members.

Election of members

(4) Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members.

Presentation and adoption of motion

(5) The Leader of the Government in the Senate, seconded by the Leader of the Opposition in the Senate, shall present a motion on the full membership of the Committee to the Senate, which motion shall be deemed adopted without any debate or vote.

Chair

(6) The Chair of the Committee shall be elected by four or more members.

Removal

(7) A member is deemed removed from the Committee as of the time that

(*a*) the Senate Ethics Officer informs the Committee that a request for an inquiry made by the Senator is warranted; or

(*b*) the Senator becomes the subject of an inquiry under the Code.

Substitutions

(8) When a vacancy occurs in the membership of the Committee, the replacement member shall be elected by the same method as the former member being replaced.

Meetings *in camera*

36. (1) Subject to subsection (2), meetings of the Committee shall be held *in camera*.

Meetings in public

(2) Where an inquiry report from the Senate Ethics Officer is being considered, the Committee may hold meetings in public at the request of the Senator who is the subject of the inquiry report.

Attendance

(3) Subject to subsection (4), the Committee may limit attendance at its meetings.

Affected Senator

(4) The Committee shall give to a Senator who is the subject of an inquiry report from the Senate Ethics Officer notice of all meetings at which the report is being considered, and shall admit the Senator to those meetings, but the Committee may exclude that Senator from those meetings or portions of meetings at which the Committee is considering a draft agenda or a draft report.

Withdrawal

(5) A member of the Committee who is the subject of a matter being considered by the Committee relating to that specific Senator shall withdraw from the Committee during its deliberations.

Jurisdiction

37. (1) Subject to subsection 41(2) and to the general jurisdiction of the Senate, the Committee is responsible for all matters relating to this Code, including all forms involving Senators that are used in its administration.

General directives

(2) The Committee may, after consultation with the Senate Ethics Officer, give general directives to the Senate Ethics Officer concerning the interpretation, application and administration of the Code, but not concerning its interpretation and application as it relates to an individual Senator's particular circumstances.

INTERSESSIONAL AUTHORITY

Intersessional Authority created

38. During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, there shall be a committee known as the Intersessional Authority on Conflict of Interest for Senators.

Composition

39. The Intersessional Authority on Conflict of Interest for Senators shall be composed of the members of the Committee.

General authority

40. (1) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Intersessional Authority on Conflict of Interest for Senators.

Additional functions

(2) Subject to the rules, direction and control of the Senate and of the Committee, the Intersessional Authority on Conflict of Interest for Senators shall carry out such other of the Committee's duties and functions as the Committee gives to it by resolution.

SENATE ETHICS OFFICER

Senate Ethics Officer

41. (1) The Senate Ethics Officer is an independent officer who performs the duties and functions assigned by the Senate under this Code.

Independent status

(2) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Committee, but is independent in interpreting and applying this Code as it relates to an individual Senator's particular circumstances.

OPINIONS AND ADVICE

Request for opinion

42. (1) In response to a request in writing from a Senator on any matter respecting the Senator's obligations under this Code, the Senate Ethics Officer shall provide the Senator with a written opinion containing any recommendations that the Senate Ethics Officer considers appropriate.

Opinion binding

(2) An opinion given by the Senate Ethics Officer to a Senator is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the opinion as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Written advice binding

(3) Any written advice given by the Senate Ethics Officer to a Senator on any matter relating to this Code is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of

the advice as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Confidentiality

(4) A written opinion or advice is confidential and may be made public only by the Senator or with his or her written consent.

Proof of compliance

(5) A written opinion or advice given by the Senate Ethics Officer to a Senator under this section and relied upon by that Senator is conclusive proof that the Senator has fully complied with the Senator's obligations under this Code, as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Publication

(6) Nothing in this section prevents the Senate Ethics Officer, subject to the approval of the Committee, from publishing opinions and advice for the guidance of Senators, provided that no details are included that could identify a Senator.

Guidelines

43. Subject to the approval of the Committee, the Senate Ethics Officer may publish guidelines for the assistance of Senators on any matter concerning the interpretation of this Code that the Senate Ethics Officer considers advisable.

ENFORCEMENT

General

Privilege

44. (1) A breach of the Code by any one Senator affects all Senators and the ability of the Senate to carry out its functions, and may lead the Senate to impose sanctions or order remedial measures.

Enforcement process

(2) To further compliance, the Code provides for a five-step enforcement process:

(*a*) statements of compliance from Senators;

(*b*) preliminary review by the Senate Ethics Officer;

(*c*) inquiry by the Senate Ethics Officer;

(*d*) Committee study; and

(*e*) Senate decision.

Respect for process

(3) Senators shall respect in all particulars the enforcement process established by the Code.

Preventive Enforcement

Statement of compliance

45. (1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a written statement of compliance confirming that he or she has read the Code within the last 30 days and

(*a*) confirming that he or she is, to the best of his or her knowledge and belief, in compliance with the

Code as of the day the statement is filed; or

(*b*) providing details of his or her non-compliance.

Filing date

(2) The date or dates on or before which the annual statements of compliance are required to be filed shall be established by the Senate Ethics Officer following approval by the Committee.

Public inspection

(3) Each statement of compliance is to be placed on file at the office of the Senate Ethics Officer and made available for public inspection.

Removal of statement from registry

(4) A statement of compliance shall be removed from the public registry at the time the Senator concerned ceases to be a Senator.

Online access

(5) Every statement of compliance available for public inspection under this section shall also be made available online on the website of the Senate Ethics Officer.

Additional information or clarification

46. Nothing in this Code prevents the Senate Ethics Officer from asking for further information or clarification from a Senator on a matter that relates to the Senator's obligations under the Code.

Preliminary Review

Nature of preliminary review

47. (1) A preliminary review is conducted to decide if an inquiry is warranted to determine whether a Senator has not complied with his or her obligations under the Code.

Mandate

(2) The Senate Ethics Officer shall conduct a preliminary review if he or she:

(*a*) has reasonable grounds to believe a Senator has not complied with his or her obligations under the Code; or

(*b*) receives a request to conduct an inquiry from a Senator who has reasonable grounds to believe another Senator has not complied with his or her obligations under the Code.

Form of request

(3) A request for an inquiry under paragraph (2)(*b*) shall be in writing and shall be signed by the initiating Senator, and it shall identify the alleged non-compliance and the reasonable grounds for the belief that the Code has not been complied with.

Notice of preliminary review

(4) The Senate Ethics Officer shall notify a Senator who is to be the subject of a preliminary review and shall provide the Senator with the following:

(*a*) in the case of a review initiated by the Senate Ethics Officer under paragraph (2)(*a*), a written notice stating the reasonable grounds for the belief that the Senator has not complied with the Code and identifying the obligations under the Code that would not have been complied with; or

(*b*) in the case of a review following a request for an inquiry received from a Senator under paragraph (2)(*b*), a copy of the request received from the initiating Senator.

Confidential and prompt

(5) The Senate Ethics Officer shall conduct a preliminary review confidentially and as promptly as circumstances permit.

Cooperation

(6) Any person participating in the preliminary review process is expected to respect its confidential nature and to cooperate with the Senate Ethics Officer.

Opportunity to be heard

(7) The Senate Ethics Officer shall afford the Senator who is the subject of a preliminary review an opportunity to respond within 15 days following the day on which the Senator is notified pursuant to subsection (4).

Extension

(8) The period provided under subsection (7) may be extended by the Senate Ethics Officer if the circumstances so warrant.

Unsubstantiated evidence

(9) Reasonable grounds to believe a Senator has not complied with his or her obligations under the Code may be based on an unsubstantiated oral or written statement for the purpose of initiating a preliminary review, but such a statement is not adequate proof of an alleged fact for the purpose of making a finding in a preliminary review.

Preliminary determination

(10) Following a preliminary review, the Senate Ethics Officer shall write a letter to the Senator who was the subject of the review, informing the Senator of his or her reasoned decision as to whether or not an inquiry is warranted.

Findings regarding reasonable grounds

(11) In the preliminary determination letter, the Senate Ethics Officer may make one of the following findings regarding reasonable grounds:

(*a*) that there are no reasonable grounds for concern that the Senator has breached his or her obligations under the Code;

(*b*) that there are insufficient reasonable grounds for concern that the Senator has breached his or her obligations under the Code; or

(*c*) that there are sufficient reasonable grounds for concern that the Senator may have breached his or her obligations under the Code.

Findings regarding breach

(12) In the preliminary determination letter, the Senate Ethics Officer may make one or more of the following findings regarding a possible breach of the Code:

(*a*) that an obligation under the Code may have been breached but that the non-compliance was trivial;

(*b*) that an obligation under the Code may have been breached but that the non-compliance occurred through inadvertence or an error in judgment made in good faith;

(*c*) that an obligation under the Code may have been breached but that all reasonable measures were taken to prevent the non-compliance; and

(*d*) that an obligation under the Code may have been breached, but that the situation has been addressed and remedied to the satisfaction of the Senate Ethics Officer or the Senator has undertaken to address and remedy the situation to the satisfaction of the Senate Ethics Officer.

Frivolous request

(13) In the preliminary determination letter, the Senate Ethics Officer may make a finding that the request for an inquiry was frivolous or vexatious or was not made in good faith, in which case he or she shall also determine whether an inquiry is warranted into the conduct of the Senator who made the request.

Delivery to subject Senator

(14) The Senate Ethics Officer shall first deliver his or her preliminary determination letter, on a confidential basis, to the Senator who was the subject of the preliminary review.

Delivery to initiating Senator

(15) In the case of a review initiated following the request of a Senator under paragraph (2)(*b*), the Senate Ethics Officer shall also deliver a copy of the preliminary determination letter, on a confidential basis, to the initiating Senator.

Delivery to Committee

(16) Unless the matter has remained confidential, the Senate Ethics Officer shall also provide a copy of his or her preliminary determination letter, on a confidential basis, to the Committee when he or she has determined that an inquiry is not warranted.

Tabling

(17) The Chair of the Committee shall cause a true copy of the preliminary determination letter received by the Committee under subsection (16) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the letter, or if Parliament is dissolved or prorogued, the Chair shall also cause a true copy of the letter to be deposited with the Clerk of the Senate at the first opportunity.

Public document

(18) A copy of a preliminary determination letter deposited with the Clerk of the Senate pursuant to subsection (17) is a public document.

Committee

(19) The Committee may ask the Senate Ethics Officer at any time whether a preliminary review about a particular Senator and matter is being or has been conducted, and the Senate Ethics Officer shall respond but shall not provide the Committee with any further information.

Preliminary review suspended

(20) A preliminary review in respect of a Senator who ceases to be a Senator is permanently suspended unless the Committee decides otherwise.

Notice to Committee

(21) For the purpose of subsection (20), when a matter has remained confidential, the Senate Ethics Officer shall inform the Committee of the preliminary review and of its status.

Representations

(22) The Committee shall consider any representations from the former Senator, from any Senator who initiated the review and from the Senate Ethics Officer before making its decision under subsection (20).

Inquiry

Nature of inquiry

48. (1) An inquiry follows a preliminary review and is conducted to determine if a Senator has breached his or her obligations under the Code.

Mandate

(2) The Senate Ethics Officer shall conduct an inquiry in either of the following circumstances:

(*a*) where the Senate Ethics Officer determines that an inquiry is warranted after conducting the preliminary review; or

(*b*) where the Senator who was the subject of a preliminary review requests that the Senate Ethics Officer conduct the inquiry because the Senate Ethics Officer has made a finding that an obligation under the Code may have been breached, but he or she has also determined that an inquiry is not warranted.

Limitation

(3) A request under paragraph (2)(*b*) shall be made within seven days following the day on which the preliminary determination letter is delivered under subsection 47(14).

Powers of the Senate Ethics Officer

(4) In carrying out an inquiry, the Senate Ethics Officer has the power to send for persons, papers, and records, which powers may be enforced by the Senate acting on the recommendation of the Committee following a request from the Senate Ethics Officer.

Notice of inquiry

(5) The Senate Ethics Officer shall notify a Senator who is to be the subject of an inquiry when the inquiry will take place.

Confidential and prompt

(6) The Senate Ethics Officer shall conduct an inquiry confidentially and as promptly as circumstances permit.

Cooperation: Senators

(7) Senators shall cooperate without delay with the Senate Ethics Officer in respect of any inquiry.

Cooperation: any person

(8) Any person participating in the inquiry process is expected to respect its confidential nature and to cooperate with the Senate Ethics Officer.

Fair hearing

(9) The Senate Ethics Officer shall give the Senator who is the subject of an inquiry information concerning relevant facts, access to relevant documentation, such opportunity as the Senate Ethics Officer considers reasonable to make representations, whether in writing or in person, and such opportunity to be present in person, accompanied or alone, at other stages in the process, as the Senate Ethics Officer considers appropriate.

Adviser

(10) A counsel or other adviser who accompanies a Senator pursuant to subsection (9) may advise the Senator confidentially, but may only make representations on behalf of the Senator to the extent authorized by the Senate Ethics Officer.

Standard of proof

(11) The determination that a Senator has breached his or her obligations under the Code shall be made on the balance of probabilities.

Report

(12) Following an inquiry, the Senate Ethics Officer shall make a report in writing, with findings, reasons, recommendations and any supporting documentation that he or she determines essential; the Senate Ethics Officer may include in the report any recommendations arising from the matter that concern the Code and its interpretation.

Mitigation

(13) If the Senate Ethics Officer concludes that a Senator has not complied with his or her obligations under the Code but has taken all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgment made in good faith, the Senate Ethics Officer shall so state in the report and may recommend that no sanction be imposed.

Remedial measures

(14) Where the Senate Ethics Officer makes a finding that the Senator breached his or her obligations under the Code, the Senate Ethics Officer shall also indicate whether remedial measures to the satisfaction of the Senate Ethics Officer have been agreed to by the Senator, whether the Senator did not agree to remedial measures that would have been to the satisfaction of the Senate Ethics Officer and what those measures were, or whether remedial measures were either not necessary or not available.

Delivery to subject Senator

(15) The Senate Ethics Officer shall first deliver his or her inquiry report, on a confidential basis, to the Senator who was the subject of the inquiry.

Delivery to initiating Senator

(16) In the case of an inquiry initiated following the request of a Senator under paragraph 47(2)(*b*), the Senate Ethics Officer shall also deliver a copy of his or her inquiry report, on a confidential basis, to the initiating Senator.

Delivery to Committee

(17) The Senate Ethics Officer shall also provide a copy of his or her report, on a confidential basis, to the Committee.

Tabling

(18) The Chair of the Committee shall cause a true copy of the report received by the Committee under subsection (17) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the report, or if Parliament is dissolved or prorogued, the Chair shall also cause a true copy of the report to be deposited with the Clerk of the Senate at the first opportunity.

Public document

(19) A copy of the report deposited with the Clerk of the Senate pursuant to subsection (18) is a public document.

Committee

(20) The Committee may ask the Senate Ethics Officer at any time when an inquiry about a particular Senator is likely to be completed, and the Senate Ethics Officer shall respond but shall not provide the Committee with any further information.

Inquiry suspended

(21) An inquiry in respect of a Senator who ceases to be a Senator is permanently suspended unless the Committee decides otherwise.

Representations

(22) The Committee shall consider any representations from the former Senator, from any Senator who initiated the inquiry and from the Senate Ethics Officer before making its decision under subsection (21).

Committee Study

Consideration of inquiry report

49. (1) The Committee shall take into consideration an inquiry report from the Senate Ethics Officer as promptly as circumstances permit.

Right to be heard

(2) When considering an inquiry report for the purpose of determining the appropriate remedial measures or sanctions, the Committee shall afford a Senator who is the subject of a report the opportunity to be heard by the Committee.

Powers

(3) For greater certainty, the Committee has, in considering a report, all of the powers of a standing Senate committee.

Recommendations

(4) Where the Senate Ethics Officer has determined that the Senator has breached his or her obligations under the Code, the Committee shall recommend, in a report to the Senate, the appropriate remedial measures or sanctions taking into account section 31 of the *Constitution Act, 1867*. The recommendations available to the Committee include, but are not limited to, the following:

(*a*) the return of any gift or other benefit;

(*b*) any remedial measure;

(*c*) the reduction or removal of access to Senate resources;

(*d*) the removal of assignments, duties or powers conferred by the Senate;

(*e*) a limitation on the right to speak or vote;

(*f*) an invitation or order to apologize;

(*g*) a censure, admonition or reprimand; or

(*h*) a suspension.

Study suspended

(5) Consideration of an inquiry report in respect of a Senator who ceases to be a Senator is permanently suspended unless the Committee decides otherwise.

Representations

(6) The Committee shall consider any representations from the former Senator, from any Senator who initiated the inquiry and from the Senate Ethics Officer before making its decision under subsection (5).

Senate Decision

Tabling for information only

50. An inquiry report of the Senate Ethics Officer is tabled in the Senate for information only, and no motion shall be moved in the Senate for its adoption.

Senator may speak

51. (1) Despite any other provision of the Code, a Senator who is the subject of a Committee report may speak to any motion related to it.

Right of reply

(2) The Senator who is the subject of a Committee report may exercise the right of final reply.

Former Senator

(3) Where a motion is to adopt a Committee report concerning a former Senator, the former Senator shall be invited to speak to the report as a witness in Committee of the Whole before disposition of the motion.

Referral back

(4) The Senate may refer a Committee report back to the Committee for further consideration.

No vote

(5) For greater certainty, a Senator who is the subject of a Committee report may not vote on any motion related to it.

Suspension of Process

Investigation

52. (1) When the matter under review or inquiry by the Senate Ethics Officer or study by the Committee is a matter in respect of which an investigation is being conducted by proper authorities to determine if an offence under an Act of Parliament or of the legislature of a province or territory has been committed, the review, inquiry or study may be suspended by the Senate Ethics Officer or the Committee, as the case may be, if:

(*a*) the Senate Ethics Officer or the Committee, as the case may be, believes that the review, inquiry or study could prejudice the investigation of the matter by the proper authorities; or

(*b*) the proper authorities request, in writing, that the review, inquiry or study be suspended.

Charges

(2) The Senate Ethics Officer shall suspend a preliminary review or an inquiry and the Committee shall suspend its study if the matter under review, inquiry or study is a matter in respect of which charges have been laid against the Senator under an Act of Parliament or of the legislature of a province or territory.

Resumption: investigation

(3) The preliminary review, inquiry or study suspended pursuant to subsection (1) may be resumed at any time by the Senate Ethics Officer or the Committee unless charges have been laid in respect of the matter under review, inquiry or study.

Resumption: charges

(4) A suspended procedure in respect of which charges have been laid against the Senator shall be resumed after the final disposition of the charges.

Notice

(5) The Senate Ethics Officer or the Committee shall notify the proper authorities when there are reasonable grounds to believe the Senator may have committed an offence under an Act of Parliament or of the legislature of a province or territory.

PUBLIC COMMUNICATIONS

General communications

53. The Senate Ethics Officer may inform the public about the mandate, procedures and processes of the Office, about public decisions of the Office and about the Code, but shall not discuss the particular circumstances of an individual Senator except as expressly authorized by either a provision of the Code or the Committee.

Case communications

54. Where a matter is of public interest, the Senate Ethics Officer may inform the public whether or not

the matter is under preliminary review or inquiry or has already been reviewed, inquired into and reported on or tabled in the Senate or with the Clerk, but shall not provide any further information; when to inform the public is a matter of discretion for the Senate Ethics Officer, to be exercised on a case-by-case basis.

Online access

55. Every preliminary determination letter, inquiry report, Committee report and decision of the Senate on any such Committee report shall be made available online at the website of the Senate Ethics Officer after it is made public by being tabled in or presented to the Senate or deposited with the Clerk of the Senate.

PRIVACY AND CONFIDENTIALITY

Privacy to be minimally impaired

56. In interpreting and administering this Code, reasonable expectations of privacy shall be impaired as minimally as possible.

Confidentiality

57. (1) All information relating to the private interests of Senators and those of their family members received pursuant to this Code or created under it is to be kept confidential, except in accordance with this Code or as otherwise ordered by the Senate.

Inclusions

(2) For greater certainty, the requirement set out in subsection (1) applies to documents and information received in the course of an inquiry that the Senate Ethics Officer has suspended in accordance with section 52, and to documents and information retained by the Senate Ethics Officer pursuant to section 58.

Confidentiality

(3) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep confidential all matters required to be kept confidential under this Code. Failure to do so shall constitute behaviour sufficient to justify either or both of the following:

(*a*) a resolution by the Senate under subsection 20.2(1) of the *Parliament of Canada Act* requesting the Governor in Council to remove the Senate Ethics Officer from office; or

(*b*) dismissal of any officers, employees, agents, advisers or consultants involved.

Retention of documents

58. (1) The Senate Ethics Officer shall retain all documents relating to a Senator for a period of 12 months after he or she ceases to be a Senator, after which, subject to subsections (2) to (4), the documents shall be destroyed.

Ongoing proceeding.

(2) Where, at the time that a Senator ceases to be a Senator, there is an investigation or inquiry in progress concerning the Senator or a charge has been laid against the Senator, the destruction of documents that relate to the matter shall be postponed until 12 months after the day of the final disposition of all related proceedings.

Return of confidential documents

(3) At a Senator's request, confidential documents relating to a Senator may be returned to the Senator instead of being destroyed.

Archiving of public documents

(4) Public documents relating to a Senator shall be forwarded to the Senate archives.

PERIODIC REVIEW

Committee review

59. The Committee shall undertake a comprehensive review of this Code and its provisions and operation once every five years, and shall submit a report to the Senate thereon, including a statement of any changes the Committee recommends.